IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 734 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJENDRA DAHYABHAI PATEL

Versus

GENERAL COOPERATIVE BANK LIMITED

Appearance:

1. Special Civil Application No. 734 of 2001

MR BAIJU JOSHI for Petitioners No. 1-2

MR RAVINDRA SHAH for Respondent No. 1

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 26/12/2001

ORAL JUDGEMENT

1. Rule. Mr. Ravindra Shah, learned advocate appears and waives the service of notice of rule on behalf of respondent. Upon the request of the learned advocates for the parties and in the facts and

circumstances of the case, the petition is taken up for final hearing today.

2. In this petition filed under Article 226 of the Constitution, petitioners challenge the orders at Annexures A, C, D, E and F to the petition.

3. Petitioner No.1 had obtained a loan of Rs.50,000/- on interest at the rate of 16% per annum from the respondent bank. Petitioner No.1 could not repay the loan amount by way of instalments regularly. The respondent bank, therefore, filed Lavad Suit No. 2674 of 1994 before the Board of Nominees for recovery of Rs.1,11,313.37 as principal and interest. As the petitioners' advocate did not remain present before the Board of Nominees, the Board of Nominees by order dated July 25, 1995 allowed the Lavad Suit by decreeing the suit as prayed for. Aggrieved thereby the petitioners preferred Appeal No. 388 of 1995 before the Tribunal. The Tribunal entertained the appeal and granted conditional ad-interim relief which was not fulfilled by the petitioners and, therefore, ad-interim relief stood automatically vacated vide order dated March 18, 1997 and the Appeal No.388 of 1995 filed by the petitioners came to be dismissed for default as petitioners' advocate did not represent before the Tribunal. The petitioners thereafter filed restoration application No.72 of 1998 before the Tribunal for restoration of the Appeal. The said restoration application was dismissed for default on August 4, 1999 by the Tribunal. Again Restoration Application No.12 of 2000 was filed by the petitioners before the Tribunal for restoration of Appeal No. 388 of 1995 as well as restoration Application No 72 of 1998 which was also dismissed by the Tribunal by order dated March 29, 2000. Thereafter the petitioners preferred Restoration Application No.65 of 2000 before the Tribunal which was rejected by the Tribunal on merits vide order dated October 30, 2000 which has given rise to the present petition.

4. At the time of hearing of this petition, Mr. Ravindra Shah, learned advocate who appears for respondent Bank states that if the petitioners deposit the entire decretal amount before the bank he has no objection if Appeal No.388 of 1995 is restored to the file before the Tribunal and the Tribunal decides the same on merits and in accordance with law. Mr. Baiju Joshi, learned advocate for the petitioners, states that the appeal as well as three subsequent applications for restoration filed by the petitioners to restore Appeal No.388 of 1995 came to be dismissed on account of default

of the advocate concerned and, therefore, for the fault of the advocate, the petitioners should not be penalized and, therefore, this petition may be allowed by quashing and setting aide the orders impugned and thereby restoring Appeal No.388 of 1995 to the file of the Tribunal and the Tribunal may be directed to decide the appeal on its own merits and in accordance with law.

5. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the petition as well as the impugned orders, copies whereof are annexed therewith.

6. From the facts emerging from the record of the case, it is clear that in Lavad Suit No. 2674 of 1994 the Board of Nominees has passed decree vide judgment and decree dated July 25, 1995 and aggrieved thereby the petitioners have preferred Appeal No.388 of 1995 before the Tribunal and it is settled principles of law that normally money decree cannot be stayed unless the decretal amount is deposited or paid to the judgment creditor. Therefore, on the facts and in the circumstances emerging from the record of the case, Appeal No.388 of 1995 filed by the petitioners which came to be dismissed by the Tribunal on account of default can be restored to its original file on condition that the petitioners shall deposit the entire decretal amount with the respondent bank on or before March 31, 2002 and on the amount being so deposited the Tribunal shall decide the appeal in accordance with law and on its own merits.

7. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned orders at Annexures C, D, E and F to the petition are quashed and set aside on condition that the petitioners shall deposit the entire decretal amount with the respondent bank on or before March 31, 2002. On the said amount being deposited by the petitioners with the respondent bank, the Tribunal shall restore Appeal No.388 of 1995 to its original file and decide the same on its own merits and in accordance with law. This Court while issuing notice on February 1, 2001 directed the petitioners to deposit an amount of Rs.5,000/- with the registry of this Court. The registry is directed to pay this amount to Mr. Ravindra Shah, learned advocate for the respondent Bank which he will deposit with the respondent bank and the said amount shall be adjusted towards the decretal amount. Rule is made absolute to the aforesaid extent with no order as to costs.

(A.M. Kapadia, J.)

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